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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C., 20548

FILE: B-204203

DATE: April 28, 1982

MATTER OF: Beall Pipe, Inc.

**DIGEST:**

Potential supplier's protest against a subcontract award is dismissed because it does not meet any of the circumstances under which GAO considers subcontractor protests.

Beall Pipe, Inc., protests against award to John M. Keltch, Inc., the low bidder under invitation for bids No. DACWG8-81-B-0041, issued by the Walla Walla District, U.S. Army Corps of Engineers, to construct a fish hatchery in Franklin County, Washington. Beall, a supplier of coal tar coated steel pipe, alleges that although the specifications permitted the use of Beall's pipe as well as other types of pipe, the Corps improperly prevailed upon Keltch to use the type of pipe furnished by another supplier. We dismiss the protest.

The original specification permitted bidders to use any one of six types of pipes, including steel pipe lined and coated with mortar. Beall requested that the contracting officer revise the specification to permit coal tar coating. The Corps then modified the specification by amendment to comply with Beall's request.

Keltch's bid of \$5,183,263 was low. Shortly after bid opening, Beall's representatives contacted Keltch to discuss the terms of a proposed subcontract to supply the pipe needed for the fish hatchery job. Beall asserts that the two firms discussed price, delivery, and a number of technical concerns relating to the use of coal tar coated steel pipe, including joint taping methods, joint inspection requirements and the type of bedding

and backfill needed. According to affidavits submitted by Beall, Keltch advised that the Corps raised these technical concerns during separate conversations between Keltch and the Corps and that, when asked, an employee of the Corps had expressed a preference for cast concrete pipe.

The Corps subsequently awarded the hatchery construction contract to Keltch, and Keltch awarded the pipe subcontract to another supplier that offered cast concrete pipe.

Beall contends that the Corps unfairly influenced Keltch to reject Beall's offer to supply coal tar coated steel pipe by stating a preference for concrete pipe and by intimating that additional work in sealing joints, joint inspection, and backfilling would be necessary if coal tar coated steel pipe were used on the project instead of cast concrete pipe. Beall suggests that the Corps' influence amounted to a revision of the specification after bid opening to preclude the use of Beall pipe.

The Corps argues that because it did not have a right of approval or other direct involvement in the selection of Keltch' subcontractors, Keltch was free to select the pipe supplier of its choice. The Corps contends that its role was limited to insuring that Keltch complied with the specification, a matter which should be considered contract administration. The Corps dismisses Beall's report of conversations between employees of the Corps and Keltch as hearsay and points out that in any event, Keltch has stated for the record that its decision to use concrete pipe was premised upon other considerations.

Our Office considers subcontractor protests only in limited circumstances. The reason for this limited review rule is that the contracting practices and procedures employed by prime contractors--who normally are acting as independent contractors--generally are not subject to the statutory and regulatory requirements governing direct Federal procurement. See Singer Company, Inc., Kearfott Division, 58 Comp. Gen. 218 (1979), 79-1 CPD 26.

One circumstance in which we do review a subcontractor protest is where the Government so actively or directly participated in the selection of the subcontractor that the net effect was to cause or control the prime contractor's selection or rejection of a particular firm, Optimum Systems, Inc., 54 Comp. Gen. 767, 773 (1975), 75-1 CPD 166. Beall contends that this circumstance exists here. We do not agree.

Even if we accept Beall's allegation that a Corps employee made the statements reported, they do not evidence an intent to preclude the use of coal tar coated pipe, to compel the use of cast concrete pipe or otherwise to modify the specification. Since Beall's pipe was acceptable under the solicitation's specifications, Keltch simply was free to select whatever type of pipe and whatever responsible supplier of that pipe it chose. We do not view the fact that an employee of the contracting agency may have expressed to the successful bidder for the prime contract a preference for one of a number of acceptable materials as a mandate, in effect, to use that material or not to use another.

Also, each of the technical concerns allegedly discussed by Keltch with the Corps and then relayed to Beall involved requirements clearly set out in the governing industry standards referenced by the invitation. We view those discussions as in the nature of preliminary concerns related to contract administration. See Industrial Boiler Co., B-187750, February 25, 1977, 77-1 CPD 142.

Finally, we note that the record includes a letter from Keltch to the Corps, apparently in response to Beall's protest, that the sole factor on which it based the award of the pipe subcontract was that the awardee's pipe fits into Keltch's pipe laying operation better than Beall's.

Under the circumstances, we cannot conclude that the Corps' participation here controlled Keltch's rejection of Beall and the selection of another pipe supplier, or amounted to an improper revision of the specifications which precluded the use of Keltch's pipe. Consequently, the protest is dismissed. Optimum Systems, Inc., supra.

*Harry R. Van Cleve*  
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